

FEB 08 2019

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK  
BY: *ASingle*  
DEPUTY CLERK

CLARENCE EDWARD  
WHITAKER, on behalf of himself  
and as Administrator of the Estate  
of Shannon Marie Whitaker,  
deceased,

Plaintiff,

v.

HYUNDAI MOTOR COMPANY,  
et al.,

Defendants.

Case No. 7:17-cv-00055

By: Michael F. Urbanski  
Chief United States District Judge

**ORDER**

Plaintiff Clarence Edward Whitaker ("Whitaker") filed his Motion in Limine No. 8 to Preclude Reference, Argument, or Testimony Relating to Abandoned Claims on January 25, 2019. ECF No. 166. Defendants Hyundai Motor Company and Hyundai Motor America, Inc. ("Defendants") responded on February 1, 2019. ECF No. 189. Whitaker replied on February 6, 2019. ECF No. 202.

Whitaker argues that any evidence of claims included in the original complaint that have since been abandoned would only distract the jury from consideration of the facts relevant to the only remaining claim. Defendants respond that evidence of Whitaker's abandoned claims will support their contention that "plaintiff's case is based on cherry-picked evidence to support a theory hatched after the eleventh hour once the so-called 'experts' realized that their original theory...was insupportable." ECF No. 189, at 1. Whitaker replies that allegations in a complaint are unsupported statements and conclusions

drafted by an attorney to give notice to defendants, not evidence of expert bias or error.

ECF No. 202, at 2.

The court agrees. Allegations in a complaint are not evidence—they are only unproven statements of fact that need discovery to be shown true or false. See Md. State Conf. of NAACP Branches v. Md. Dep't of State Police, 72 F. Supp. 2d 560, 568 (D. Md. 1999) (“...inclusion of an event...in the complaint does not determine whether evidence of that event will be admissible or legally significant.”). Evidence of bias may be shown any number of ways; “evidence of dismissed and abandoned claims would potentially confuse and prejudice the jury.” Fallon v. Potter, No. CIV.A. 04-526-JJB, 2008 WL 5395984, at \*2 (M.D. La. Dec. 23, 2008).

Whitaker’s Motion in Limine No. 8 is **GRANTED**.

It is **SO ORDERED**.

Entered: 02-08-2019

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
Chief United States District Judge